

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-216580 **DATE:** March 1, 1985
MATTER OF: American Marine Decking Systems, Inc.
DIGEST:

1. It is primarily the contracting agency's responsibility to determine its minimum needs, and GAO will not question such a determination absent a clear showing that it was arbitrary or capricious. Moreover, an agency is not precluded from correcting or clarifying a solicitation when its minimum needs will not be met.
2. The use of specifications that do not adequately describe the government's actual needs generally provides a compelling reason for cancellation of a solicitation.

American Marine Decking Systems, Inc. protests the rejection of its bid as nonresponsive to invitation for bids (IFB) No. N00244-84-B-5013, issued by the Naval Supply Center, San Diego, California, for replacement of terrazzo deck covering. The firm also protests the Navy's subsequent cancellation and resolicitation, arguing that it should receive an award under the original IFB.

We deny the protest.

The original IFB, which contemplated a fixed-price, indefinite-quantity contract for a base and 2 option years, was issued on July 30, 1984. It required unit and extended prices on a per-square-foot basis for removal and replacement of deck tile, terrazzo, and rubber matting on vessels being repaired in the San Diego area. Bids from five companies were received and opened on August 29, 1984. The Navy rejected American Marine's bid as nonresponsive on grounds that it failed to identify properly the qualified products to be provided. After determining that all other bids were also nonresponsive,

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the Navy canceled the solicitation on September 14, 1984, and issued a resolicitation, No. N00244-85-B-0061, on December 28, 1984.

The original IFB required the contractor to:

"Prepare Surfaces, Install MIL-D-3134H [a military specification for deck covering materials that incorporates by reference a qualified product list (QPL)], Type I, Class 1 or 2 Terrazzo deck covering as specified on individual delivery orders . . ."

In addition, the solicitation required that all work be in accord with certain applicable specifications and references, including Naval Ships (NAVSEA) Technical Manual, chapter 634, Deck Coverings, changes (1) through (7). Change 7, the only one at issue here, approves certain alternatives to the deck covering materials listed in the military specification. It also divides "terrazzo" into latex-type and resin-type. Bidders were required to list the item name and test number, if known, of each qualified product to be supplied.

American Marine asserts that its low bid was responsive since it offered to supply three different resin (class 2) terrazzos that, according to its reading of the QPL and the alternatives list, could be used interchangeably with latex (class 1) terrazzo. The protester alleges that the Naval Supply Center itself has indicated by placement of delivery orders in the past that it believes the two terrazzos are equivalent; that the generic term "terrazzo" appears in the NAVSEA manual as the approved deck covering for different areas of a ship; that the Commander of the Naval Sea Systems Command, in a letter dated February 25, 1980, found no significant differences between latex and resin terrazzo; and that NEGWLT Product MM-T-200, a resin terrazzo that American Marine offered, is acceptable as an alternative to any type terrazzo called for under the military specification. In addition, American Marine asserts that it had no reasonable basis on which to bid two types of terrazzo, since the solicitation did not include separate estimated quantities for class 1

and class 2. American Marine concludes that its bid was responsive and that the original solicitation therefore should not have been canceled.

The Navy responds that the solicitation required bidders to offer and identify two classes of terrazzo-- latex and resin--and it had a legitimate reason for requiring both. Since American Marine failed to identify a class 1, or latex, terrazzo, the Navy asserts that the bid was nonresponsive. Navy further contends that any objection to the lack of precise quantities of each class of terrazzo is untimely, since under our Office's Bid Protest Procedures, 4 C.F.R. § 21.2 (1984), any objection to allegedly deficient specifications must be raised before bid opening. Because no responsive bids were received, the Navy contends that it was obliged to cancel the solicitation.

In the resolicitation, as amended, the Navy clarified its requirements by specifically stating that it reserved the right to order, on a case-by-case basis, either type I, class 1, or type I, class 2, terrazzo deck covering.

It is clear that contracting officers have broad authority to reject all bids and cancel a solicitation. However, because of the adverse effect cancellation can have on the competitive bidding system, a compelling reason must exist to warrant cancellation after bid opening. Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1 (1984); Engineering Research Inc., 56 Comp. Gen. 364 (1977), 77-1 CPD ¶ 106. The use of specifications that do not adequately describe the government's actual needs generally provides a compelling reason. See, e.g., Kings Point Mfg. Co., Inc., B-210757, Sept. 19, 1983, 83-2 CPD ¶ 342; Tecom, Inc., B-213815.2, Aug. 6, 1984, 84-2 CPD ¶ 152.

In this regard, it is primarily the contracting agency's responsibility to determine its minimum needs, and we will not question such a determination absent a clear showing that the determination was arbitrary or capricious. Winandy Greenhouse Co., Inc., B-208876, June 7, 1983, 83-1 CPD ¶ 615. An agency thus is not precluded from correcting or clarifying a solicitation when its minimum needs have not been met. It is the protester

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who bears the burden of showing that the determination to cancel is unreasonable. Surgical Instrument Company of America, B-211368, Nov. 18, 1983, 83-2 CPD ¶ 583.

In this case, we have no basis to question Navy's determination that the solicitation should be reissued with clarifications that assure that its needs will be met. The record indicates that the Navy has determined through experience that latex and resin terrazzo are not always interchangeable; it considers latex to be better suited for certain areas of a ship, such as the galley or mess, and resin to be better suited to other areas, such as where chemicals are present. Thus, the agency's decision to require two types of deck material to be offered and identified appears neither arbitrary nor capricious.

Whether American Marine's bid was or was not responsive to the original solicitation is irrelevant, since an award under it would not have met the Navy's needs. We therefore find the cancellation proper, and we deny the protest.

for *Stephen E. Brown*
Harry R. Van Cleve
General Counsel